

REMARKS

The Examiner has rejected Claims 1, 15 and 29 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner has argued that “waiting a time delay” was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the Examiner asks “what waiting a time delay is for. Does it mean going from channel to channel? If so, [the] Examiner has been unable to locate this in the specification.”

In response, applicant respectfully points out page 12, lines 1-2 of the originally filed specification which clearly states that “[m]onitoring the channels involves, “joining” and “leaving” each channel with a suitable time delay, and simulating “normal” user activities.” Thus, when read in context, it is clear that there is a time delay with respect to joining and leaving each channel. As an option, this may be used for simulating “normal” user activities.

The Examiner has rejected Claims 1, 6-8, 15, 20-22, 29, 34-36, 58-67 under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald, “Virus Bulletin,” ISSN 0956-9979, October 1998. Applicant has noted, however, that the Examiner has relied on references other than Fitzgerald in rejecting the foregoing claims, including Free Online Dictionary of Computing (Dictionary), Slennox’s eggdrop page: what is an eggdrop? (Slennox-1), and Slennox’s Eggdrop Command Reference (Slennox-2).

Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims. Specifically, applicant has amended each of the independent claims to substantially include the subject matter of Claims 60, 62 and 63.

With respect to the subject matter of Claim 60, the Examiner has merely stated that applicant’s claimed technique “wherein an Internet Relay Chat client is utilized in the

joining, the retrieving, and the monitoring” would have been obvious to one of ordinary skill in the art at the time of the invention. Specifically, the Examiner has referenced the rejection of Claim 1 in making such an obviousness rejection. With respect to the Examiner’s pertinent rejection of Claim 1, applicant notes that the Examiner has relied on page 3, paragraphs 1 and 2 in Fitzgerald to meet applicant’s claimed “retrieving a list of channels of the Internet Relay Chat server.”

Applicant respectfully asserts that such excerpt from Fitzgerald only discloses “a ‘bot’ [implemented] to monitor selected IRC channels” (emphasis added). Clearly, only generally teaching “selected IRC channels” does not meet applicant’s specifically claimed “Internet Relay Chat client [that] is utilized in...the retrieving” where the retrieving is with respect to “a list of channels of the Internet Relay Chat server.” To emphasize, a bot that only monitors already selected IRC channels, as in Fitzgerald, does not meet an “Internet Relay Chat client” “[that retrieves] a list of channels of the Internet Relay Chat server,” in the context claimed by applicant (emphasis added).

With respect to the subject matter of Claim 62, the Examiner has relied on page 3, paragraphs 1 and 2 in Fitzgerald to make a prior art showing of applicant’s claimed technique “wherein the Internet Relay Chat client scans the received data to detect the computer malware.” Applicant respectfully asserts that Fitzgerald expressly discloses that the “jIRC..collect[s] files...[and that] any files received are scanned by GeCAD’s scanner, RAV.” Thus, Fitzgerald clearly teaches a separate scanner (e.g. RAV) that scans files received by the bot, and not an “Internet Relay Chat client [that] scans the received data to detect the computer malware,” as claimed by applicant (emphasis added).

With respect to the subject matter of Claim 63, as substantially incorporated into each of the independent claims, the Examiner has relied on page 3, paragraph 3 in Fitzgerald to make a prior art showing of applicant’s claimed technique “wherein the Internet Relay Chat client collects statistics.” Applicant respectfully asserts that such excerpt only discloses that “[w]eekly statistics are generated and posted,” but not specifically that the “Internet Relay Chat client collects [the] statistics,” as claimed by applicant. In fact,

applicant notes that the only functionality of the bot disclosed in Fitzgerald includes “monitoring selected IRC channels” and “collect[ing] files sent via the DCC protocol” (emphasis added), but not collecting statistics, in the manner claimed by applicant. To further emphasize such distinction, applicant has incorporated the following claim language into each of the independent claims:

“wherein the Internet Relay Chat client...collects statistics including a receipt time of the data and a sender of the data” (emphasis added).

With respect to such specific claim language, as addressed by the Examiner, in part, in Claim 59, the Examiner has taken Official Notice in rejecting applicant’s claimed “receipt time of the data and a sender of the data.” Specifically, the Examiner has stated that such was well known in the art at the time the invention was made and in making such an argument has referenced Ji et al. (U.S. Patent No. 5,889,943) and Hughes (U.S. Patent No. 6,389,472, col. 12, lines 1-15 and 55-67).

Applicant respectfully asserts that Hughes merely relates to filter lists, and does not even suggest any sort of Internet Relay Chat client or “data received from the monitored channel,” in the context claimed by applicant. In fact, Hughes only discloses collecting a number of times a filter is hit, but not “a receipt time of the data,” as claimed by applicant.

In addition, applicant notes that Ji only relates to “detecting and eliminating viruses...introduced by messages sent through a postal node of a network electronic mail system” (emphasis added-see Abstract), and not to any sort of Internet Relay Chat client or “data received from the monitored channel,” in the context claimed by applicant. Furthermore, applicant also notes that Ji does not even teach “a receipt time of the data and a sender of the data,” and especially not in the context claimed by applicant. Thus, for the reasons stated above, applicant respectfully asserts that it would not have been well known in the art at the time the invention was made for an “Internet Relay Chat client... [to collect] statistics including a receipt time of the data and a sender of the data” (emphasis added), as claimed. Note the excerpt from the MPEP below.

“If the applicant traverses such an [Official Notice] assertion the examiner should cite a reference in support of his or her position.” See MPEP 2144.03.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a proper prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. Just by way of example, with respect to applicant’s claimed technique “wherein the storing and logging includes storing and logging a receipt time of the data and a sender of the data” (Claim 59), applicant respectfully asserts that, for substantially the same reasons as argued above, such limitations would not have been well known in the art at the time of the invention.

With respect to Claim 64, the Examiner has again taken Official Notice in rejecting applicant’s claimed technique “wherein the Internet Relay Chat client notifies an administrator of the computer malware.” Specifically, the Examiner has relied on Spear (U.S. Patent No. 6,611,925) and Hughes (U.S. Patent No. 6,389,472, col. 12, lines 50-67) in

making such an argument. Applicant respectfully asserts that neither Spear nor Hughes relates to Internet Relay Chat communications, and that therefore it would not have been well known for an “Internet Relay Chat client [to] notif[y] an administrator of the computer malware,” as specifically claimed by applicant (emphasis added). Note the excerpt from the MPEP cited above.

With respect to Claim 67, the Examiner has completely failed to even address applicant’s claimed technique “wherein the analyzing is performed manually.” Applicant notes that with respect to applicant’s claimed technique “wherein the analyzing is automatically performed” (Claim 66), the Examiner has argued that the purpose of a bot is to operate autonomously, meaning with no human interaction being required. Thus, according to the Examiner’s own arguments, the analyzing would not be performed manually in the manner claimed by applicant in Claim 67.

Since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or a proper prior art showing of all of the claim limitations, in the context of the remaining elements, is respectfully requested.

Still yet, applicant brings to the Examiner’s attention the subject matter of new Claims 68-69 below, which are fully supported by the specification and added for full consideration:

“wherein the monitoring is performed utilizing a restricted and secure scripting language” (see Claim 68); and

“wherein a plurality of Internet Relay Chat clients running on a single computer are each utilized in the joining, the retrieving, and the monitoring” (see Claim 69).

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

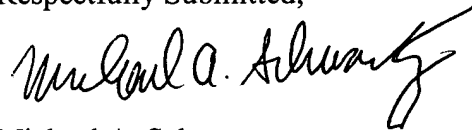
Additional Fees:

The Commissioner is hereby authorized to charge any insufficient fees or credit any overpayment associated with this application to Deposit Account No. 19-5127 (19903.0015).

Conclusion

In view of the foregoing, all of the Examiner's rejections to the claims are believed to be overcome. The Applicants respectfully request reconsideration and issuance of a Notice of Allowance for all the claims remaining in the application. Should the Examiner feel further communication would facilitate prosecution, he is urged to call the undersigned at the phone number provided below.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael A. Schwartz", written in a cursive style.

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